

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ROBERT T. JONES,	:	APPEAL NO. C-090593
	:	TRIAL NO. 09CV-05235
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
UNITED PARCEL SERVICE, INC.,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant, Robert T. Jones, appeals the summary judgment entered by the Hamilton County Municipal Court in favor of defendant-appellee, United Parcel Service, Inc., (UPS) in a suit alleging breach of contract.

Jones entered into a contract with UPS to deliver a diamond ring for payment collectible on delivery to a person named Charles Goodman. Jones purchased residential service for the delivery.

UPS did not deliver the parcel to the residence listed in the contract. Instead, the delivery was completed in a parking lot after the ostensible consignee had contacted the driver and requested the driver to meet him at that location. The consignee provided a cashier's check for the amount specified in the contract. The check identified Charles Goodman as the remitter and "Bob Jones" as the payee.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

The cashier's check was later revealed to be fraudulent, and Jones requested payment for the ring and other costs from UPS. UPS denied the request on the basis that its driver had delivered the package to the listed consignee and had accepted payment in an appropriate form under its contract with Jones.

Jones filed suit, asserting that UPS had violated the terms of the contract by failing to complete residential service. UPS filed a motion for summary judgment, which the trial court granted.

In a single assignment of error, Jones now argues that the trial court erred by entering summary judgment in favor of UPS.

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party.² This court reviews the granting of summary judgment de novo.³

The construction of a written contract is a matter of law for the court.⁴ The court must enforce the plain and ordinary meaning of the language as written if it is unambiguous.⁵

In this case, the court properly gave effect to the plain meaning of the contract. The contract, in defining delivery, stated that "[d]elivery for all purposes shall be deemed to include, but not be limited to: delivery to the consignee or the

² See *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

³ *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶6.

⁴ *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶9.

⁵ *Id.*

consignee's actual or apparent agent or representative* * *." Here, it was beyond dispute that the person who had tendered the check in the precise amount specified by Jones had at least the apparent authority to receive the parcel.

And contrary to Jones's assertion, the contract's definition of "residential service" did not give rise to liability, even though service to a residence had not been effectuated in this case. The contract stated that "[a] residential delivery is defined as delivery to a location that is a home, including a business operating out of a home that does not have an entrance open to the public. If the delivery location could be construed as either residential or commercial, then the rates for residential delivery service will be applied." Thus, the definition of residential service did not contradict the definition of "delivery" already quoted; rather, it clarified what was meant by "residential service" for the purposes of billing the customer.

Moreover, the failure on the part of UPS to deliver the parcel to the residence could not be said to have caused Jones's loss. As UPS aptly notes, its driver had delivered the package to a person who had contacted UPS to meet him in a specified location; the person had met the driver in the appointed place; and he had tendered a facially valid cashier's check in the exact amount provided for in the shipping instructions. It was thus the recipient's fraud, not any actions or omissions of UPS, that had caused Jones's loss.

In this regard, the contract stated that "[a]ll checks or other negotiable instruments (including cashier's checks, official bank checks, money orders and other similar instruments) tendered in payment of C.O.D.s will be accepted by UPS based solely upon the shipper assuming all risk relating thereto including, but not limited to, risk of non-payment, insufficient funds, and forgery, and UPS shall not be

liable upon any such instrument.” Because the contract placed all risk related to forged or fraudulent checks on the shipper, UPS was not liable for the damages that had been caused by the fraud in this case.

Therefore, we overrule the assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010
per order of the Court _____.
Presiding Judge